

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Federal-State Joint Board)	
On Universal Service)	CC Docket No. 96-45
)	
RCC Holdings, Inc.)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
In the State of Alabama)	
)	
and)	
)	
Cellular South License, Inc.)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
In the State of Alabama)	
_____)	

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COMMENTS OF:

OREGON TELECOMMUNICATIONS
ASSOCIATION

AND

WASHINGTON INDEPENDENT TELEPHONE
ASSOCIATION

I. SUMMARY:

The Oregon Telecommunications Association (“OTA”) and Washington Independent Telephone Association (“WITA”) (collectively the “Northwest Commenters”), submit these Comments. The Northwest Commenters address the issues relating to the level of objective information that should be required by state utility commissions, or the Federal Communications Commission (“Commission”), before a common carrier should be designated as an eligible telecommunications carrier (“ETC”) in a rural area already served by an existing ETC under 47 U.S.C. § 214(e)(2) of the Telecommunications Act of 1996 (the “Act”). The Northwest Commenters also comment on the analytical approach that should be employed to review the objective information a state commission or the Commission should require before designating a common carrier as an additional ETC in a rural area already served by an existing rural ETC. Finally, the Northwest Commenters address the public interest test to be employed in the analysis. The Northwest Commenters urge the Commission to overturn the decisions of the Wireline Competition Bureau made in this docket.

II. THE CURRENT CONFUSION CONCERNING THE DESIGNATION OF MULTIPLE ETCs IN RURAL AREAS:

There is currently a great deal of confusion surrounding both the level of information and the process needed to designate an additional ETC in a rural area already served by an existing ETC. The Telecommunications Act of 1996 (the “Act”) provides, in part:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. § 214(e)(2) (emphasis supplied).

From this language it is obvious that more is required than an automatic ETC designation of a second carrier in a rural area. Many, including the Northwest Commenters, assert that the Act requires an objective inquiry into the petitioning carrier's ability to actually provide the nine delineated services under 47 C.F.R. § 54.101. Further, the Act requires an objective inquiry into whether having multiple ETCs in that particular rural area is "in the public interest." The objective inquiry into both the services and the public interest should involve more than a vague assertion from the petitioning carrier promising to provide the services and serve the public interest.

The Commission's decision in In the Matter of Federal State Joint Board on Universal Service Western Wireless Corporation for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45, FCC 00-248 (Released Aug. 10, 2000) supports the need for something more than a vague assertion of intent. The Commission stated:

We caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the

part of a carrier to provide service. The carrier [requesting ETC status] must reasonably demonstrate to the state commission its ability and willingness to provide service upon designation.

FCC 00-248, at ¶ 24 (emphasis added).

Despite this language, the Wireline Competition Bureau (“WCB”) has issued an opinion in support of RCC Holdings, Inc.’s (“RCC”) Petition to be designated as an additional ETC in rural areas of Alabama that does not seem to require more than a vague assertion of intent. It stated:

Moreover, contrary to the arguments of the Alabama Rural LECs, RCC Holdings is not required to provide a detailed description of its planned universal service offerings beyond its commitment to provide, or statement that it is now providing, all of the services supported by the universal service support mechanism.

DA 02-3181, at ¶ 8.¹ How is it possible to not be a “vague assertion of intent” and still be nothing more than a statement of its “commitment to provide” the nine required services? Thus, although Section 214(e)(2) requires a demonstration of both the ability and willingness of a petitioning communications carrier, these requirements have, in many instances, been eroded such that very little objective information is required, as more fully discussed below.

III. AN EXAMPLE OF THE PRACTICAL EFFECT OF THE CONFUSION:

The practical effect of the confusion is that widely divergent levels of analysis are

¹ The WCB took an identical approach in deciding the Petition submittal by Cellular South License, Inc., DA 02-3317.

employed by different state commissions to designate or deny designation of additional ETCs in rural areas.² For example, in Utah, the state commission investigated Western Wireless Holding Company's petition for ETC designation via an adjudicative hearing.³ When Western Wireless failed to demonstrate, among other things, its ability to serve the rural public given the topography of the individual rural communities at issue, the Utah Commission rejected Western Wireless's Petition for ETC designation because it was not "in the public interest." Like Utah, other jurisdictions require an adjudicative hearing before designating additional ETCs is permitted.⁴

However, others state commissions have taken the "less is more" theory to the extreme. One example of this can be found in Washington. In Washington, the Washington Utilities and Transportation Commission (the "WUTC") was petitioned by United States Cellular Corporation ("USCC") on December 9, 1999, to designate USCC as an ETC in 72 rural areas, many of which were already served by existing ETCs. These rural areas were vastly different, both in terms of the geography and the relative size and strength of the existing ETCs. Further, USCC mistakenly believed that ETC designation had to be granted before the end of the 1999 calendar

² Further, the courts have also been burdened by the confusion associated with these divergent standards resulting in decisions that cannot be harmonized. In both the Utah example, cited in the next footnote, and the Washington example, detailed in these Comments below, the States' Supreme Courts were called upon to interpret the FCC's requirements concerning ETC designation in rural areas.

³ In the Matter of the Petition of WWC Holding Co., Inc. for Designation as an Eligible Telecommunications Carrier, Public Service Commission of Utah, Docket No. 98-2216-01 (July 21, 2000) affirmed by WWC Holding Company, Inc. v. Public Service Commission of Utah, 44 P.3d 714 (2002).

⁴ See, e.g., Western Wireless Corporation Designated Eligible Carrier Application, State of North Dakota Public Service Commission, Case No. PU-1564-98-428 (April 26, 2000); In the Matter of Minnesota Cellular Corporation Petition for Designation as an Eligible Telecommunications Carrier, Minnesota Public Utility Commission Docket No. P-5695/M-98/1285 (Oct. 27, 1999).

year in order for it to be eligible for universal service funding in 2001. As a result, USCC asked the WUTC to expedite review of its petition. The WUTC obliged and scheduled the matter for discussion (and decision) at an open public meeting on December 29, 1999.

No notice was provided to any of the existing ETCs serving the rural areas because this was to be handled at an open public meeting, instead of via an adjudicative hearing. Despite the lack of notice, the rural companies serving the areas in which USCC was seeking to be designated as an additional ETC discovered the existence of USCC's petition. The existing ETCs attempted to raise issues concerning the fact that USCC was actually a holding company, and was not a carrier, as required by the Act. At an open meeting of the WUTC, USCC was allowed to verbally amend its petition to include each of its subsidiaries.

Further, this oral amendment of the petition was accomplished by allowing USCC to call a witness at the open public meeting. The witness presented only the most general statements. There was no evidence of calling plans, coverage, services offered or other elements of the ability to advance universal service, except the coarse statement that USCC offers the required elements of basic service. However, none of the existing rural ETCs were allowed to cross-examine the USCC witness or point out the defects in the oral modification. The existing, rural ETCs were not allowed to call their own witnesses in rebuttal or present any other form of evidence to the WUTC. The existing ETCs were not allowed to discuss whether USCC was capable of providing service in several rural areas due to the topography of the land. The discussion concerning the "public interest" consisted of a statement of a Staff member who had

done no independent investigation into any of the services USCC proposed to offer as an additional ETC.

After a limited of discussion at the open public meeting, the WUTC designated USCC, and each of its subsidiaries, as an additional ETC in each of the 72 rural areas. The existing rural ETCs appealed, and the case is now pending before the Washington Supreme Court.

Shortly before oral argument in front of the Washington Supreme Court (which occurred January 16, 2003), USCC filed a Statement of Supplemental Authority attaching a copy of the WCB Order from this docket. Further, RCC, as an Amicus Curiae on behalf of USCC and the WUTC, filed a brief relying heavily upon the order issued in this matter by the WCB. The result of this confusion is that the Washington Supreme Court must now decipher whether the Commission meant what it said in FCC 00-248 that a “vague assertion of intent” was insufficient and a petitioning carrier “must reasonably demonstrate to the state commission its ability and willingness to provide service upon designation.” Or, did the Commission mean what the WCB stated that “RCC Holdings is not required to provide a detailed description of its planned universal service offerings beyond its commitment to provide, or statement that it is now providing, all of the services . . .”?

IV. THE NEED FOR AN OBJECTIVE EVALUATION OF BOTH AN ADDITIONAL ETC’s CAPABILITIES AND THE PUBLIC INTEREST:

As a result of the confusion detailed above, the Northwest Commenters request that the Commission issue an Order detailing answers to at least the following questions:

1. Is a general affidavit all that is required to demonstrate both the ability and willingness to provide the nine delineated services under 47 C.F.R. § 54.101?
2. Is an affidavit sufficient to satisfy the inquiry into the public interest under 47 U.S.C. § 214(e)(2)?
3. Is an adjudicative hearing needed to evaluate either a petitioning carrier's willingness and ability to provide the nine delineated services or the public interest or both?
4. Does the petitioning carrier have to address how designation of an additional ETC will affect each rural area individually or can it lump all rural areas together for the purpose of demonstrating its services and the public interest?
5. Does the petitioning carrier bear the burden of proving that it can provide the services and satisfy the public interest test or does the existing ETC bear the burden of proving that the petitioning carrier cannot provide the nine essential services or designation is not in the public interest?⁵

Without guidance on these subjects, state commissions are left to attempt to construe the intent of the conflicting statements and points of view concerning the level of objective evidence

⁵ In virtually every other context, when a party is seeking the opportunity to obtain public money, that party has the burden of proving that it is entitled to the money. See, e.g., Richardson v. Perales, 402 U.S. 389, 393, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971) (discussing claimants failure to carry his burden of proof necessary to demonstrate entitlement to disability benefits). In the case of ETC designation in Washington, the WUTC has established a methodology that reverses this requirement. Under the WUTC's application of the "public interest" test, the party opposing the ETC designation apparently has the burden of objectively demonstrating that the proposed ETC designation is inappropriate.

needed to designate an additional ETC in a rural area. Indeed, without guidance on these subjects, the size of the universal service fund (“USF”) will continue to expand, while the relative benefit to rural America is negligible, at best. As more fully discussed below, the arguments petitioning carriers use obtain ETC designation in rural areas is leading to a devastating result that no one can argue is “in the public interest.”

V. THE MISLEADING “ZERO-SUM GAME” ARGUMENT:

The Commission must consider the potential harm associated with perpetuating the confusion and problems inherent in the practical application of the rural ETC designation process as it currently exists. Proponents of a system in which no objective information is needed for ETC designation routinely assert a “why do you care” argument. That argument looks something like this: the current structure of the universal service fund is such that USF funds provided to an additional rural ETC do not subtract from the funds provided to the original ETC. As a result, existing or original ETCs should not care whether or how many additional ETCs are designated in the rural areas served by the existing ETC because it has no financial impact on the existing ETC’s level of funding.

This “why do you care” argument ignores both the past and the almost certain future. Until a relatively short time ago, universal service funding was a “zero sum game” situation. An increase in universal service funding to a newly designated ETC had the ability to reduce the total funding provided to an existing rural ETC. Although this “zero sum game” situation is no longer in effect, there is a growing concern that it will be thrust upon the telecommunications

industry again. More significantly, it will have a direct and adverse effect on the “public interest.”

In the short time period that the Commission has allowed all ETCs to claim as much USF funding as they can, the size of the fund has accelerated.⁶ It has increased in size to the point that for the first time in more than sixty-five years the Commission has had to borrow funds to cover a shortfall in the USF.⁷ In justifying this unprecedented step, the Commission stated:

In the *Schools First Report and Order*, the Commission concluded that unused funds from the schools and libraries support mechanism would be applied to stabilize the collection requirement for universal service in the third and fourth quarters of 2002, and the first quarter of 2003, if necessary, while it examines whether more fundamental reform of the basis for assessing universal service contributions is warranted.⁸

These actions indicate that the Commission is concerned about the sustainability of the current support mechanism, even at current levels of support funding. It is apparently for these reasons that the Commission has issued the Joint Board Referral seeking comments on the various ways in which universal funding can be more efficiently and effectively accomplished.⁹

In the Article, USF Portability – Getting it Right,¹⁰ Mr. Glenn Brown details several reasons why the size of the USF is expanding so rapidly. He states:

⁶ For example, the Universal Service Administration Company’s 2nd quarter, 2003 report shows the number of rural ILEC study areas that now have a competitive ETC has grown to 409, up from 141 in just one quarter.

⁷ *Proposed Fourth Quarter 2002 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice DA 02-2221, Released September 10, 2002, at page 2.

⁸ *Id.*, at 2-3.

⁹ *In the Matter of Federal-State Joint Board on Universal Service*, Order, FCC 02-307 (released November 8, 2002) (“Joint Board Referral”).

¹⁰ Glenn Brown, “USF Portability – Getting it Right,” Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) Newsletter, *The Advocate* (September 2002). This article is available on the OPASTCO web site but requires a subscription. This Article will be referred to hereafter as

Many carriers applying for ETC status already provide service to customers within the study area for which they seek ETC designation. The customers were obtained under business plans that did not anticipate or require explicit support. When such a carrier is granted ETC status, however, they often request funding for all of the existing customer lines. This results in an immediate and significant increase in the size of the fund for little tangible near-term benefit.

Thus, as additional carriers are granted ETC status and request funding for their existing customer base, the fund will grow to what may be unmanageable proportions.

The issue to be addressed is how is universal service furthered by the designation of an additional ETC in a rural area. Increasing the size of the USF without obtaining objective benefits for universal service is not an acceptable outcome.

VI. THE MISLEADING “ANTI-COMPETITION” ARGUMENT:

When faced with arguments and evidence concerning the lack of objective information provided by the petitioning communications carrier, the typical response seems to be to attack the challenger with a label – “anti-competitive.” Armed with various generic quotes about the benefits of competition and the purpose of the Act to promote competition, the petitioning carrier almost always asserts that the challenging or existing ETCs are really attempting to stifle competition. This is not true.

First and foremost on the list of generic “anti-competitive” rhetoric are various quotes from Alenco Communications, Inc. v. FCC, 201 F.3d 608 (5th Cir. 2000). In Alenco, two telecommunications carriers brought suit against the Commission to enjoin changes to the USF.

“Getting it Right.” It is also available without a subscription at www.mcleanbrown.com by clicking on the “Special

Alenco, 201 F.3d at 614. These changes involved placing caps on the USF that the carriers felt would limit their rate of return and therefore damage the carriers financially. Alenco, 201 F.3d at 617-18. In this context, the Fifth Circuit stated:

The Act does not guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market. Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.

Alenco, 201 F.3d at 620.

Two points should be made about this statement. First, given the assertion that, according to the Fifth Circuit, local telephone companies going out of business as a result of “competition” is a contemplated result of the Act, it is imperative that state commissions make a detailed, objective determination that the additional ETC can adequately replace all of the services offered by the local telephone company if it goes out of business as a result of the competition. Without such an analysis, many consumers could be left without any telephone service, which would be expressly counter to the purposes of universal service and the language of Alenco quoted above.

Second, this language from Alenco must be read in context. For example, in Alenco, the Court explicitly emphasized the need to balance the objectives of universal service and competition:

Issue Updates” link on the right side of the introductory web page.

The FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other. The Commission therefore is responsible for making the changes necessary to its universal service program to ensure that it survives in the new world of competition.

Alenco, 201 F.3d at 615 (emphasis in original). This means that the advancement of competition cannot be the primary reason for distinguishing a second ETC in a rural area. The objective advancement of universal service is a required element. The specific example the Alenco Court provides to ensure a proper balance between the objectives of universal service and competition is through a careful analysis of ETC designations. The Court stated:

To the extent petitioners argue that Congress recognized the precarious competitive positions of rural LEC's, their concerns are addressed by 47 U.S.C. § 214(e), which empowers state commissions to regulate entry into rural markets.

Alenco, 201 F.3d at 622.

This holding is confirmed by the Eighth Circuit Court of Appeals in Iowa Utilities Board v. FCC, 219 F.3d 744, 761-63 (8th Cir. 2000). In Iowa Utilities Board, the Court recited the specific protections that Congress intended for small and rural local incumbent exchange carriers ("ILECs"). Although offered in the context of a rural ILEC's exemption from the requirements that it enter into certain agreements under 47 U.S.C. §§ 251(c) and 252, the intent behind the Eighth Circuit's decision is relevant in this context as well. It stated:

There can be no doubt that it is an economic burden on an ILEC to provide what Congress has directed it to provide to new competitors in [the statute]. Because the small and rural ILECs, while they may be entrenched in their markets, have less of a financial capacity than larger and more urban ILECs to meet such a request, the Congress declared that their statutorily-granted exemption from doing so should continue unless the state commission found all three prerequisites for terminating the exemption, or determined that all prerequisites for suspension or modification were met in order to grant an ILEC affirmative relief.

Iowa Utilities Board, 219 F.3d at 761-63. Thus, like Congress' intent to protect rural ILECs from certain interconnection obligations without an affirmative demonstration that these protections were not appropriate, Congress also intended to protect rural ILECs serving as existing ETCs, unless and until a petitioning carrier can objectively demonstrate that it is "in the public interest" for an additional ETC to be designated in the rural areas.

Thus, the argument that existing ETCs are simply seeking to eliminate all competition is false. Existing ETCs in rural areas are simply attempting to keep the protections Congress intended until it is objectively demonstrated that the public interest warrants designation of an additional ETC. The quotes taken out of context from Alenco do not add any credence to the claims that competition is the primary aim of ETC designation or to the argument that existing ETCs are seeking monopolies by questioning the designation of multiple ETCs in rural areas. Alenco stands for the propositions that (1) universal service is at least coequal to competition as a goal of the Act and (2) designation of a second ETC in a rural area requires careful consideration.

VII. BALANCING THE INTERESTS OF COMPETITION AND UNIVERSAL SERVICE IN THE SPECIFIC CONTEXT OF THE "PUBLIC INTEREST" TEST:

As demonstrated above, competition cannot be the sole aim of determining what is in the public interest under 47 U.S.C. § 214(e)(2). Indeed, it is not even the primary interest when the public interest is concerned. In the event that the objectives of competition and universal service cannot be harmonized, universal service must take precedence over competition. Senator

Dorgan, who introduced the amendment to the Act that requires a public interest finding before designating a second ETC in a rural area, said in part:

[T]he protection of universal service is the most important provision in this legislation. S.652 contains provisions that make it clear that universal service must be maintained and that citizens in rural areas deserve the same benefits and access to high quality telecommunications services as everyone else. This legislation also contains provisions that will ensure that competition in rural areas will be deployed carefully and thoughtfully, ensuring that competition benefits consumers rather than hurts them. Under this legislation, the State will retain the authority to control the introduction of competition in rural areas and, with the FCC, retain the responsibility to ensure that competition is promoted in a manner that will advance the availability of high quality telecommunications services in rural areas.

Congressional Record of June 8, 1995, S 7951-2. (Emphasis supplied).

Senator Dorgan was not alone. Senator John F. Kerry of Massachusetts (D-MA) stated: “The conference report also maintains universal service as a cornerstone of our Nation’s communications system.” 142 Cong. Rec. S687, S710. Senator Ernest Hollings of South Carolina (D-SC) stated: “The need to protect and advance universal service is one of the fundamental concerns of the conferees in drafting this conference agreement.” 142 Cong. Rec. S687, S688. Thus, the need for an objective, detailed adjudicative hearing, in which existing ETCs are entitled to participate, before designating an additional ETC in rural areas is in keeping with the essential objectives of the Act.

If the petitioning carrier can objectively demonstrate that it provides the required services and that it is in the public interest to designate an additional ETC in each rural area in which the petitioning carrier seeks designation, the existing ETCs would have very little to complain about. If the objectives of both universal service and competition can be satisfied, then the requirements

of the Act are also satisfied. However, when there is no objective evaluation of the actual capabilities or the effect on each rural area then the issue has not been adequately addressed and the public interest has not been satisfied.

Under federal standards, determination of the public interest must be made with reference to the purposes of specific statutory sections to be implemented. See, American Paper Institute v. American Electric Power Service Corporation, 461 U.S. 402, 103 S. Ct. 1921, 76 L. Ed. 2d. 22 (1983). In American Paper, the Supreme Court found that FERC was required to make its "public interest" determination with respect to the specific objectives of Section 210 of the Public Utility Regulatory Policy act ("PURPA"). The Court did not refer to other sections or general purposes of PURPA. Rather, the Court said in part:

The Commission has a statutory mandate to set a rate that is "in the public interest" and as this Court stated in NAAC v. FPC, 425 US at 669, 96 S. Ct., at 1811, "the words 'public interest' in a regulatory statute ... take meaning from the purposes of the regulatory legislation." The basic purpose of Section 210 of PURPA was to increase the utilization of cogeneration and small power production facilities and to reduce reliance on fossil fuels.

American Paper, 103 S. Ct. at 1930.

The public interest in designation of an ETC is universal service. From Senators Dorgan, Kerry and Hollings' statements quoted above, it is clear that in weighing the public interest, the state commission must focus on the effect that an additional ETC designation in rural company service areas will have on preserving and advancing universal service. Indeed, neither 47 U.S.C. 214(e) nor 47 U.S.C. 254 mentions the promotion of competition as a guiding principle for

universal service. Instead, 47 U.S.C. 254(b) sets out the principles for the preservation and advancement of universal service as including the following:

- (1) Quality and Rates. – Quality service should be available at just, reasonable, and affordable rates.
- (2) Access to Advanced Services. – Access to advanced telecommunications and information services should be provided in all regions of the Nation.
- (3) Access in Rural and High Cost Areas. – Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

In Federal Commission v. RCA Communications, 346 U.S. 86, 97 L. Ed. 1470, 73 S. Ct.

998 at 1004 (1953), Justice Frankfurter stated the applicable standard:

Our difficulty arises from the fact that while the Commission recites that competition may have beneficial effects, it does so in an abstract, sterile way. Its opinion relies in this case not on its independent conclusion, from the impact upon it of the trends and needs of this industry, that competition is desirable, but primarily on its reading of national policy

To say that national policy without more suffices for authorization of a competing carrier wherever competition is reasonably feasible would authorize the Commission to abdicate what would seem to us one of the primary duties imposed on it by Congress.

Other courts have applied a similar standard when evaluating competition in the context of federal statutes. For example, in All America Cables and Radio, Inc. v. FCC, 736 F. 2d. 752, 757, (D.C. Cir. 1984), the Court reversed a decision by the FCC, saying in part:

While no doubt competition in the telecommunications industry is as a general matter in the public interest, that may not be true in specialized situations

In *Hawaiian Telephone Company v. FCC*, 498 F. 2d. 771 (D.C. Cir. 1974), this Court observed that competition is not to be equated automatically and in all circumstances with the public interest . . .

Accordingly, the same standard should apply where the state commission has a duty to make a finding regarding public interest, in the context of promotion of universal service. A general preference is not a substitute for a specific factual basis for a finding about the effect of designation of a second ETC on providing universal service. Without a specific, objective showing that the “public interest” is promoted by designation of an additional ETC in a rural area already served by an existing ETC, state commissions should refrain from making such designations lightly.

VIII. CONCLUSION

Given the need to address the twin, but conflicting goals, of universal service and competition, and the need to properly apply the public interest test in 47 USC 214 (e)(2), the Commission should issue clear guidance on designation of a second ETC in a rural area. The WCB’s RCC Alabama ETC and Cellular South ETC Orders only add to the confusion, the WCB’s Orders are contrary to the plain language of the Act and the previous Orders issued by the Commission. As a result, the Commission should reverse the WCB’s Orders.

The Commission should clarify that the consideration of whether designation of a second ETC on a rural area requires: (1) that a general affidavit or assertion to establish the ability and willingness to provide the required services is not sufficient; (2) the public interest requires objective findings and a conclusion that designation of a second ETC in a rural area will advance

universal service, taking into account the effect on the existing ETC's ability to meet universal goals; (3) a full hearing is the best method to make this determination; (4) the application of a carrier to serve multiple rural areas must be reviewed with consideration of how it will effect each rural area; and (5) the petitioning carrier bears the burden of proving its application satisfies universal service requirements and the public interest.

Respectfully submitted on February 10, 2003.

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